IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10520 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JITENDRAKUMAR SHANTILAL SHETH - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR DILIP B RANA for Petitioner(s) : 1,
MR SATYAM CHAYYA, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
MR DHAVAL M BAROT for Respondent(s) : 2,
DS AFF.NOT FILED (N) for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 24/01/2007

ORAL JUDGMENT

1. Rule. Mr. Chayya, learned AGP waives service of rule for respondent Nos. 1 & 3 and Mr. Barot for respondent No.2. With consent of the learned

advocates appearing for both the sides, the matter is finally heard.

2. The petitioner has preferred the petition for challenging the order passed by the State Government dated 07.06.2005, whereby the non-agricultural permission granted in favour of the petitioner is set aside.

3. Heard Mr. Rana, learned counsel appearing for the petitioner, Mr. Chayya, learned AGP for the State Authorities and Mr. Barot for the District Panchayat.

4. Upon hearing the learned advocates appearing for both the sides, it appears that it is not in dispute that initially the land was shown in the revenue record vide entry No. 676 dated 20.07.1971 as that of old tenure. It is also not in dispute that a portion of the land was purchased by APMC Tharad. It is not in dispute that the land was sold by the original holder Jetha Harji and Reva Harji to one Rupa Bhana and Aja Bhana by Registered Sale Deed. It is not in dispute that on 15.12.2003, the petitioner purchased the portion of the land admeasuring 5 acre 10 gunthas from the legal heirs of Harijan Bhana.

5. It appears that on 09.08.2004, the petitioner made an application for converting the land for NA use and vide order dated 08.11.2004, the

permission was granted by the District Panchayat for converting the land for NA use. Till then, no objection was raised at any point of time that the land is a new tenure land and cannot be converted into NA use unless the appropriate permission is obtained of the Collector by paying the requisite premium.

6. It appears that after the order for NA use was passed, the State Government in purported exercise of the power under Section 211 of the Bombay Land Revenue Code, issued show-cause notice as to why the permission of NA use should not be taken in revision and set aside since the land was restricted tenure land and prior to the conversion into NA, permission of the District Collector was not obtained. The petitioner submitted reply to the show-cause notice and contended inter alia that the land was shown in the revenue record as old tenure and not only that but thereafter, it was sold to one person and the petitioner purchased the land from him. It was further contended that the transaction of sale between the land lord and the tenant were also regularised and therefore, as the land is of old tenure, the ground mentioned in the notice is not maintainable and therefore, the notice may be withdrawn. It appears that thereafter, the State Government passed the order on 01.06.2005, whereby it has observed that the land was a restricted tenure land/new

tenure and therefore, if the permission is to be obtained for NA use, prior approval of the District Collector was required to be obtained and as no permission was obtained and as no premium is paid, NA use could not have been permitted and therefore, as the order came to be passed without prior approval of the District Collector and without payment of the premium to the State Government, the order passed by the District Panchayat is set aside in the revisional jurisdiction.

7. It is under these circumstances, the petitioner has approached to this Court by preferring the present petition. It may be stated that when this Court considered the matter for the first time on 02.09.2006, the following order was passed :

> "Pursuant to the order passed by this Court on 29.08.2006, Mr. Rana, learned counsel appearing for the petitioner states that the petitioner is agreeable to pay the premium as per the policy of the Government on the basis of the market value prevailing on the date when the petitioner purchased the property with interest @ 12% p.a. from that date till the actual payment.
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> In view of the above, ***Notice*** returnable on 25th September, 2006. The respondent No. 2 shall report to this Court the tentative valuation of the land in question on the date when the alleged transaction had taken place so as to enable the Court to consider the matter at the time of passing further interim order."

8. Thereafter, the affidavit-in-reply has been filed on behalf of respondent No.3 District Collector and at para 6, it has been stated inter alia that the District Valuation Committee in its meeting dated 27.10.2006, has decided the valuation of the land in question on 10.12.2003 to be of Rs.150/- per sq. mtr. and Rs.200/- per sq.mtr. as on the date of the meeting of the Valuation Committee. It is further stated in the affidavit-in-reply that the petitioner has purchased the land in question on 15.12.2003 and the possession of the petitioner is less than 20 years and therefore, as per the resolution of the State Government dated 18.12.2004, the State Government is competent to determine the amount of premium.

9. As such, if the matter is strictly examined and the conduct of the Authority is considered, it appears that initially the land was shown in the revenue record as that of old tenure and at the time when the transaction took place between the original holder Jetha Harji and Reva Harji with one Rupa Bhana and Aja Bhana on 23.10.1973, such transaction is not objected nor any material is placed on record to show that the objection was raised or that the transaction was approved with restriction. Not only that but, on 21.04.1987 when the APMC purchased the land which is a portion of the land bearing Survey No. 105 from

Harijan Bhana, no objection is raised by the Government. Such objection also was not raised when the land was converted for NA by APMC and for which, permission came to be granted to the APMC by the District Panchayat in April 1991. Therefore, it can be said that the petitioner acted bonafide on 15.12.2003 when he purchased the property as if the land is old tenure land. Not only that, but based on the Registered Sale Deed, the entry also came to be mutated and the concerned authority at no point of time raised such objection. The fact remains that the permission actually came to be granted for NA use on 09.08.2004. by the District Panchayat and thereafter, the objection has been raised that the land is a restricted tenure.

10. Even if the land is a restricted tenure land, the transfer is not completely barred as per the provisions of Section 43 of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as “the Act') but the requirement is that the prior permission of the District Collector is required to be obtained and the necessary premium is required to be paid to the Government. No proceedings are initiated under the Tenancy Act for declaration of the transaction as invalid being in breach of the provisions of Section 43 and only at the stage of NA use, such objections are raised. Therefore, when the transaction is already

entered into and the transaction could have been entered into with the prior permission of the District Collector, if the objections are raised at the stage when the land is already converted into NA use, it would be just and proper for the authority to take a pragmatic view inasmuch as by recovery of the premium with some penalty, the order of NA use could be maintained and the situation could not have been created to the irreversible extent.

11. In my view, as per the declaration recorded hereinabove, when the petitioner is ready to pay the requisite premium to the Government with interest @ 12% from the date of the transaction, the matter can be considered by the District Collector for granting post facto permission and it can also be considered by the State Government for maintaining the order of NA use and if such a power is exercised, it would not cause any prejudice to the revenue and the matter can be put to an end for all time to come.

12. It deserves to be recorded that as per the report submitted of the District Valuation Committee on the date of the transaction, the valuation is made as of Rs.150/- per sq. mtrs. Therefore, while considering the question of grant of post facto permission, the District Collector may consider the aspects of percentage

of the premium, as may be required by the petitioner to pay as per the policy of the Government on the basis that the valuation is Rs.150/- per sq. mtrs., and for the period thereafter, if the amount of interest is charged at the rate of 12% per annum, it will take care for the compensatory measure, which normally would be bank rate of interest of approximately 9% per annum and 3% may be towards the penal measure. Therefore, if the matter is considered accordingly, it would balance the rights of the petitioner qua the land in question and the interest of the Government so far as the calculation of premium is concerned.

13. In view of the aforesaid, I find that the following directions shall meet with the ends of justice:-

(a) The District Collector shall consider the matter for grant of post facto permission to the transaction of purchase of the land made by the petitioner on 15.3.2003 for conversion into old tenure and for enabling the petitioner to make the change of the use for non-agricultural purpose. While considering the matter, the District Collector shall take into consideration the observations made by this Court and also the report of the District Valuation Committee having assessed the value of the land at

Rs.150/- per sq. mtrs. The District Collector shall take the decision as early as possible, preferably within a period of three months from the date of receipt of the order of this Court.

(b) The petitioner may be granted reasonable time of about four months to deposit the amount by the District Collector, but the interest would continue from the date of transaction until the actual payment is made at the rate of 12% p.a.

(c) After the order is passed by the District Collector of granting post facto permission and the full requisite amount is paid, the order passed by the State Government in revision would not survive for cancelling the N.A. Permission and the order of the District Panchayat for grant of permission of N.A. shall continue to remain in operation with the modification of the order of the District Collector for payment of the premium as indicated earlier.

14. The petition is partly allowed in terms of the aforesaid direction. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

(JAYANT PATEL, J.)

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